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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

DATE MAILED: 05/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/056,485

Applicant(s)

KUSAGAWA ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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1. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: abstract, line 6, i.e. "their" should be --its--, page 1, line 17.

2. The drawings are objected to because in Figures 1 and 6, the cross-sectional lines X-X, Y-Y, and Z-Z should be denoted by Arabic or Roman numerals instead. It is noted the descriptions on page 2, lines 28-29 and page 3, line 2 should be appropriately amended. In Figure 2, a line or arrow from the numeral 2 to the appropriate structure rather than the bracket should be provided. This also applies to the numeral 31 in Figure 2, 44a and 44b in Figure 3, and 50 in Figure 5. In Figure 1, the numeral 1 should not be underlined. In Figures 5 and 6, where is 1'? A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The disclosure is objected to because of the following informalities: 1) On page 5, line 20, after "side" should --4b-- be inserted? If not, what is 4b in Figure 3? 2) On page 17, lines 17-19 should be avoided, i.e. since the priority has been claimed such will appear on the front of the patent, if any, and so this statement is redundant.

Appropriate correction is required.

4. Claims 1-9 are objected to because of the following informalities: in claim 1, line 3, "the" should be --a--. On line 6, "their" should be --its--. On line 8, "the" should be --a--. In claims 2-

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3 and 5-9, line 1, "An" should be --The--. On line 2, "each longer side" should be --the respective longer sides--. In claim 3, line 3, "the"(both) should be --a--. In regard to claims 4 and 9, see discussion of claims 1-3 supra which apply to similar language in these claims. In claim 5, line 4, after "skin", insert --when worn--. Appropriate correction is required.

5. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, on line 2 what does "thereof" refer to? The leakproof layer? The article? In regard to claim 2, lines 3-4, is Applicant claiming the extension portion, and thereby the elastic member fixed in the longitudinal direction thereof as claimed in claim 1, extending parallel the respective longer side? In regard to claim 4, see discussion of claim 1 supra which applies to similar language in this claims. Additionally, what does "that" refer to on line 8? Are the portions of the aggregate forming the ridges of lower density and the other portions of the aggregate forming the valleys? In claim 6, line 6, what does the terminology ", alternately," refer to ? Do the compressed parts and other parts alternate?

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Correa et al '386.

See Figures 1a-3, absorbing layer is 3, leakproof layer is 2, gathers are 4 and 5, elastic extensible portions are 6-8, ridges are shown in Figure 2a as 8.

8. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Shimizu et al '234.

See Figures 2-3, and col. 4, line 1-col. 6, line 17, i.e. absorbing layer is 4, leakproof layer is 3, standing gathers are 19, extensible portion is 17, 18, upright portion is 16, sheet is nonwoven fabric of 19, elastic member is 24, hollow ridges are gathers formed by the fabric of 19 as described at col. 5, lines 15-30, (note no adhesive shown between 19 and 24 in Figure 3, i.e. no continuous fixing) and extend across the width of the extension portion, see Figure 2, edge of 19 and gather lines across 19. With regard to claim 3, the claim requires the stem portion to connect to the middle region of the width direction of the elastically extensible portion. Since it is not specifically claimed what the middle region encompasses as compared to the entire width and the Shimizu et al patent shows a stem portion connected inward of the inner edge of the portion, the stem is considered to be connected to the middle region of the portion.

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9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 4 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hedlund et al in view of Buell, '645.

The Hedlund et al device includes all the claimed structure except for, as best understood, parts of the fiber aggregate forming ridges of lower density than the other parts of the fiber aggregate which forms valleys therebetween. The Hedlund et al device includes a substantially oblong shape, i.e. "oblong" as defined by the American Heritage Dictionary is "having a long dimension, esp. having one of two perpendicular dimensions, as length or width, greater than the other, elongated.", an absorbing layer 2, a leakproof layer 1, standing gathers are T-shaped

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portions formed by edges of 1 and bands 14 and 15, which bands are the elastically extensible portion and include a fiber layer and an elastic member, see col 3, lines 20-45, the ridges are shown in Figure 1, the apices of such ridges form a wavy line because the bands 14 and 15 are attached in a tensioned state, see cited portion above, and the edge portions of casing 1 form the upright portion which is connected to the middle portion of the extensible portion. The bands 14 and 15, which can have various compositions, are furnished to prevent or resist leakage while providing a high degree of comfort, see col. 1, lines 32-40. However, also, see Buell at Figures, col. 1, lines 7-12 and col. 10, line 29-col. 12, line 56, i.e leakage resistant member which provides high degree of comfort due to pillows of low density. To employ the band as taught by Buell on the Hedlund et al device would be obvious to one of ordinary skill in the art in view of the recognition that they are both elastic bands provided to prevent leakage but provide comfort, see In re Siebentritt, 54 CCPA 1083(two equivalents are interchangeable for their desired function, express suggestion of desirability of substitution not needed to render such substitution obvious).

11. Claims 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hedlund et al and Buell as applied to claim 4 above, and further in view of Fell et al '835.

The prior art combination clearly teaches all the claimed structure except for the fiber aggregate including two fiber aggregate layers, see, e.g., Buell at col. 7, line 56-col. 8, line 11, col. 11, lines 14-17 and col. 8, line 35-39, col. 9, lines 23-35, i.e bands or members are fibrous layer and a layer of material suitable for a backsheet connected in various manners including thermally, and Hedlund et al at the cited portions supra, i.e casing is nonwoven, i.e fibrous, and

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elastic. However, see, also, Fell et al at col. 6, lines 12-30 and col. 10, line 39-col. 11, line 32, i.e. backsheet suitable materials include nonwoven layers, i.e. fibrous aggregates, and casings can include nonwoven layers, i.e. two fibrous aggregate layers. To employ a fiber aggregate as the second layer of the fiber aggregate or casing as taught by Fell et al, if not already, would be obvious to one of ordinary skill in the art in view of the recognition that such fiber aggregates are known to form backsheets and casing sheets and the desire of Hedlund to use a nonwoven casing sheet and the desire of Buell to use a material which is suitable for use as a backing sheet as the second sheet of the leakage resistant band or member. It is noted with regard to claim 5, that it is not required that the two layers protrude toward the wearer's skin in parallel fashion, i.e. a crest and valley of one layer could be adjacent a crest and valley of the second layer and such would include two layers which protrude at the crest of the one layer and at the valley of the second layer.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other patents show various elastomeric combinations.

13. Any inquiry concerning this communication should be directed to K. M. Reichle at telephone number 703-308-2617. The Examiner's regular work schedule is Monday-Thursday.

The Official RightFAX number is 703-308-2617.

K.M. Reichle
K.M. REICHEL
PATENT EXAMINER

KMR

May 11, 2003